

ARGUMENTS/COMMENTS

Claims 1 through 20 are currently pending in the present application. Claims 1 and 2 are amended by the present amendment to correct formalities.

Applicants sincerely appreciate the indication of allowability of claims 16 through 20.

In the Office Action, the specification noted to include the use of a trademark that was not capitalized or provided with generic terminology. The specification has been amended to capitalize the trademark LYCRA and generic terminology has been added to the locations in the specification where it was not already present.

In the Office Action, the specification was objected to a failing to provide proper antecedent basis for the claimed subject matter under 37 CFR 1.75(d)(1) and MPEP 608.01(o). The specification has been amended accordingly with the claimed subject matter. Now the specification at paragraph 26, on page 6 has been amended to state that "the layers are arranged such that the pair of breast cups have a first fabric layer, a second fabric layer and a third fabric layer between the first fabric layer and the second fabric layer". The specification now provides proper antecedent basis for the claimed subject matter. Withdrawal of the objection is respectfully requested.

In the Office Action, claim 1 through 8 were objected to as having informal errors. Claims 1 and 2 have been

amended to correct the informal errors. Withdrawal of the objection is respectfully requested.

In the Office Action, claims 1 through 15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,447,462 to Smith et al. (hereinafter "the Smith et al. patent"). Applicants respectfully disagree.

Claim 1 is directed to a brassiere for supporting a wearer's breasts. Claim 1 now provides that each of the pair of breast cups has a first fabric layer, a second fabric layer and a third fabric layer between the first fabric layer and the second fabric layer, the third fabric layer having an outer surface and an inner surface and the third fabric layer provides breathability to the wearer's breasts and support to the pair of breast cups. The third fabric layer has a first side and a second side, with the third fabric layer having a plurality of perforations, valleys or dimples in a location of the third fabric layer.

The Smith et al. patent, which is owned by the ass is directed garments, such as brassieres, that incorporate fabric laminates having two outer layers and an inner layer of an adhesive web or film. (column 5, lines 42 through 52). The adhesive web is heat sensitive and formed of a polyamide material. The laminate is formed by the application of pressure and heat.

In the Smith et al., there is no recitation that the inner layer provides breathability to the wearer's breasts. In contrast, the inner heat activated web or film layer together with the outer layers are subjected to heat and

pressure. The application of heat and pressure to form the laminate teach away from an inner layer that provides breathability to a wearer's breasts. Additionally, there is no recitation that the inner layer has a plurality of perforations, valleys or dimples in a location of the fabric. Again, the use of pressure and heat to form the laminate of the patent teaches contrary to the formation of a plurality of perforations, valleys or dimples. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

Claim 2 depends from independent claim 1, and is also not anticipated by the Smith et al. patent for the same reasons. Withdrawal and reconsideration of the 35 U.S.C. 102(b) are respectfully requested.

Claim 3 depends from independent claim 1 and provides that the third fabric layer has a plurality of perforations forming a pattern that is visible through the first fabric layer.

The Office Action states that "the perforations are visible through sheer outer fabric layer". (page 4). Applicants' respectfully disagree. First, there is no disclosure that the third layer of the Smith et al. patent has a plurality of perforations that form a pattern. The Smith et al. patent only states that the third layer is formed as either a web or a film. Further, after reviewing the Smith et al. patent, Applicants are unable to find any recitation in the patent that references perforations that are visible through the sheer outer fabric. Accordingly,

reconsideration and withdrawal of the rejection are respectfully requested.

Claim 4 depends from independent claim 3 and provides the pattern be selected from the group consisting of a floral pattern, a flower, a plurality of flowers, a heart, a plurality of hearts, a spiral, a plurality of spirals, a free-form design, a message, a plurality of numbers, a plurality of letters, a logo, and any combinations thereof.

As discussed previously, there is not any recitation in the Smith et al. patent of any pattern, and not any pattern of the claimed group. The Smith et al. patent only states that the third layer is formed as either a web or a film. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Claim 5 depends from independent claim 1 and provides that the third fabric layer has a feature selected from the group consisting of a plurality of dimples, a plurality of valleys, and any combinations thereof.

As discussed above, there is no recitation in the Smith et al. patent that the third fabric layer has a plurality dimples, a plurality of valleys or any combinations thereof. The Smith et al. patent only states that the third layer is formed as either a web or a film. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Claim 6 depends from independent claim 1, and is also not anticipated by the Smith et al. patent for the same reasons set forth above with respect to claim 1. Withdrawal and reconsideration of the 35 U.S.C. 102(b) are respectfully requested.

Claim 7 depends from independent claim 1 and provides that the third fabric layer is connected between be the first fabric layer and the second fabric layer, the third layer being connected by a method selected from the group consisting of sewing, gluing, riveting, molding, ultrasonic connection, a mechanical connection, and any combinations thereof.

The Office Action states that "the sheer outer fabric layer. . . is glued". (page 4). Applicants respectfully disagree with this assertion. After reviewing the portions of the specification referenced in the Office Action, the third fabric layer recited to be an "open netlike film of a heat sensitive adhesive", is not connected between the first and second fabric layers by gluing, as claimed. In contrast, the laminate is formed by fusing. (column 9, lines 12 through 37) Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Claim 8 depends from independent claim 1 and provides that the third fabric layer be connected peripherally to the first fabric layer and said second fabric layer, wherein said third fabric layer is substantially enclosed between said first fabric layer and said second fabric layer.

The Smith et al. patent does not disclose or suggest that the third layer be connected peripherally to the first fabric layer and the second fabric layer. In contrast, "fabric layers 11 and 12 . . . are secured to each other along their opposed surfaces 14 and 15 by heat activated adhesive web 13". (column 5, lines 15 through 18) Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Independent claim 9 is directed to an article of clothing for covering a wearer's breasts. Claim 9 provides for, *inter alia*, a spacer fabric layer being on the outer layer of fabric when the article of fabric of clothing is positioned on the wearer. The spacer fabric layer is positioned between the outer fabric layer and the wearer's breasts. The spacer fabric layer provides breathability to the wearer's breasts. The spacer fabric layer has a first side and a second side with the spacer fabric layer having a plurality of perforations on a location of the spacer fabric layer.

In the Smith et al. patent, there is no such spacer fabric that is disclosed. In contrast, the embodiment of the brassiere in the Smith et al. patent has a laminate 58, having an outer layer and an adhesive web or film positioned between the outer layer and the wearer's breasts. This adhesive web or film is laminated and is heat activated and is not a spacer fabric. The spacer fabric of the instant invention must be interpreted in light of the specification. (pp.2 and 8, at Paragraphs [0006] and [0032]; respectively).

Further, there is no recitation that such a heat activated web or film material does or could provide breathability to the wearer's breasts. That the heat activated web or film material and layers are formed into a laminate at temperatures between 300 °F and 350 °F with applied pressure does not suggest that the web or film provides breathability. Additionally, there is no recitation in the Smith et al. patent that web or film has a plurality of perforations, valleys or dimples that provides breathability of the wearer's breasts. Accordingly, withdrawal and reconsideration of the 35 U.S.C. 102(b) are respectfully requested.

Claim 10 depends from independent claim 9 and provides that the spacer fabric layer has a first surface facing the wearer's breasts and being substantially smooth relative to a second surface with the second surface being opposite the first surface.

The Smith et al. patent, as discussed, does not disclose or suggest a spacer fabric. Further, there is no recitation in the Smith et al. that the first surface facing the wearer's breasts is substantially smooth relative to the second surface. In fact, after lamination using heat and pressure, both surfaces would be of equal smoothness. Accordingly, withdrawal and reconsideration of the rejection are respectfully requested.

Claim 11 depends from independent claim 9 and provides that the plurality of perforations are on a portion of the spacer fabric layer that correspond to a location where the wearer's breasts lay, and that said plurality of

perforations allow a predetermined amount of air to substantially traverse through said spacer fabric layer, and that said predetermined amount of air are suitable to cool the wearer's breasts during exercise.

As discussed, the Smith et al. patent does not disclose or suggest a spacer fabric. There is no recitation in the disclosure that the inner layer has a plurality of perforations that allow a predetermined amount of air to substantially traverse through the fabric. In contrast, the use of pressure and heat to activate the web or film to form the laminate of the Smith et al. patent teaches contrary to the formation of an inner layer having a plurality of perforations that provide breathability to a wearer's breasts or allow a predetermined amount of air to substantially traverse the fabric. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

Claim 12 depends from independent claim 9 and provides that the spacer fabric layer has a feature selected from the group consisting of a plurality of dimples, a plurality of valleys, a concave surface, a convex surface, an aperture, a hole, and any combinations thereof.

As discussed, the Smith et al. patent does not disclose or suggest a spacer fabric. Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 13 depends from dependent claim 12 and provides that the feature is formed in a pattern selected from the group consisting of a floral pattern, a flower, a plurality

of flowers, a heart, a plurality of hearts, a spiral, a plurality of spirals, a free-form design, a message, a plurality of numbers, a plurality of letters, a logo, and any combinations thereof.

The Smith et al. patent has a heat activated web or film disposed between two outer opposing layers. There is no recitation in the Smith et al. patent that the heat activated web or film has any pattern from the claimed group or any combination thereof. Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 14 depends from independent claim 9 and provides that the spacer fabric layer and the outer fabric layer be formed from a material being selected from the group consisting of a mono-filament material, a multi-filament material, a polyester, a microfiber, a cotton, a nylon, a spandex, a stretchable fabric material, a power mesh material, a multi-filament polyester spandex, a molded fabric material, a weft knit fabric, a warp knit fabric, and any combinations thereof.

As discussed, the Smith et al. patent does not disclose or suggest a spacer fabric. Reconsideration and withdrawal of the rejection are respectfully requested.

Independent claim 15 is directed to an article of clothing for covering over a wearer's breasts. Claim 15 provides that a spacer fabric layer be enclosed between the first fabric layer and the second fabric layer. The spacer fabric layer provides breathability to the wearer's breasts, and the spacer fabric layer has a pattern, that is

visible through at least one of the first fabric layer and the second fabric layer. Also, the pattern is disposed on a first location corresponding to a second location where the wearer's breasts lay.

In the Smith et al. patent, there is no such spacer fabric that is disclosed. In contrast, the embodiment of the brassiere in the Smith et al. patent has a laminate 58, that has an outer layer and an adhesive web or film positioned between the outer layer and the wearer's breasts. This adhesive web or film is laminated and is heat activated and is not a spacer fabric.

Additionally, there is no recitation in the Smith et al. patent that the inner layer is of such a material that would provide breathability of a wearer's breasts. In contrast, the use of pressure and heat to activate the web or film to form the laminate of the Smith et al. patent, is a teaching that is contrary to the formation of an inner layer having a plurality of perforations that provide breathability to a wearer's breasts.

Further, there is no recitation in the Smith et al. patent that the inner layer has a pattern. Still further, Applicants are unable to find any recitation in the Smith et al. patent that any perforations are visible through the any of the fabric layers. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

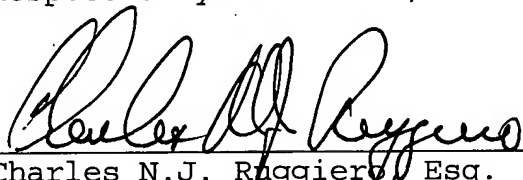
Again, Applicants sincerely appreciate the indication of allowability of claims 16 through 20.

In view of the foregoing, Applicants respectfully submit that all claims presented in the application patentably distinguish over the cited prior art and the cited combinations of same. Accordingly, Applicants respectfully request favorable consideration and that this application be passed on to allowance.

Respectfully submitted,

June 20, 2005

Date

A handwritten signature in black ink, appearing to read "Charles N.J. Ruggiero", is written over a horizontal line.

Charles N.J. Ruggiero Esq.

Reg. No. 28,468

Attorney for the Applicants
Ohlandt, Greeley, Ruggiero &
Perle, L.L.P.

One Landmark Square, 10th Floor
Stamford, CT 06901-2682

Tel: 203-327-4500

Fax: 203-327-6401